



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Renewed and Amended Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State of Utah

AGENCY: Federal Highway Administration (FHWA), Utah Division Office, DOT.

ACTION: Notice of MOU renewal and amendments and request for comments.

SUMMARY: This notice announces that the FHWA and the Utah Department of Transportation (State) plan to renew and amend an existing MOU established pursuant to certain statutory authorities under which FHWA has assigned to the State FHWA's responsibility for determining whether a project is categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (NEPA) and for carrying out certain other responsibilities for conducting environmental reviews, consultations, and related activities for assigned projects. The public is invited to comment on any aspect of the proposed MOU, including the scope of environmental review, consultation, and other activities which are assigned.

DATES: Please submit comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION].

ADDRESSES: You may submit comments by any of the methods described below.

Website: www.udot.utah.gov/go/environmental

Fax: 1-202-493-2251

Hand Delivery: U.S. Department of Transportation, Ground Floor Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84129. Office Hours: 7:00 a.m. to 4:30 p.m. (MST), Edward.Woolford@dot.gov; Mr. Brandon Weston, Environmental Services Director, Utah Department of Transportation, 4501 South 2700 West, Salt Lake City, UT 84129, Office Hours 8:00 a.m. to 5:00 p.m. (Monday through Friday) (MST), brandonweston@utah.gov.

BACKGROUND: Section 326 of amended chapter 3 of Title 23, United States Code (23 U.S.C. 326), allows the Secretary of the United States Department of Transportation (USDOT Secretary), to assign, and a State to assume, responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of Title 40, Code of Federal Regulations (CFR). The FHWA is authorized to act on behalf of the USDOT Secretary with respect to these matters.

In July 2008, FHWA and the State executed a MOU which assigned the responsibility to the State for determining certain designated activities as categorically excluded under section 6004(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, Aug. 10, 2005). The assignments include:

1. Activities listed in 23 CFR 771.117(c); and
2. The example activities listed in 23 CFR 771.117(d).

The MOU had an initial term of 3 years, proposed revision to 5 years, and may be renewed and/or amended. The renewal/amendments are the subject of this Notice. As part of this renewal, proposed changes to the MOU include modification to terminate an

existing programmatic agreement between the State and FHWA for processing proposed projects that are candidates for categorical exclusion but that are not included on the lists described in 1-2 above. The MOU assigns to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

1. Clean Air Act (CAA), 42 U.S.C. 7401-7671q (determinations of project-level conformity if required for the project).
2. FHWA noise regulations in 23 CFR part 772.
3. Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531-1544, and Section 1536.
4. Marine Mammal Protection Act, 16 U.S.C. 1361.
5. Anadromous Fish Conservation Act, 16 U.S.C. 757a-757g.
6. Fish and Wildlife Coordination Act, 16 U.S.C. 661-667d.
7. Migratory Bird Treaty Act, 16 U.S.C. 703-712.
8. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq.
9. Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. §306101 et seq.
10. Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; and 23 CFR part 774.
11. Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469-469(c).
12. American Indian Religious Freedom Act, 42 U.S.C. 1996.
13. Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201-4209.
14. Clean Water Act, 33 U.S.C. 1251-1377 (Section 404, Section 401, Section 319).
15. Coastal Barrier Resources Act, 16 U.S.C. 3501-3510.

16. Coastal Zone Management Act, 16 U.S.C. 1451-1465.
17. Safe Drinking Water Act (SDWA), 42 U.S.C. 300f-300j-6.
18. Rivers and Harbors Act of 1899, 33 U.S.C. 401-406.
19. Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287.
20. Emergency Wetlands Resources Act, 16 U.S.C. 3921-3931.
21. TEA-21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11).
22. Flood Disaster Protection Act, 42 U.S.C. 4001-4128.
23. Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601-4604 (known as section 6(f)).
24. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675.
25. Superfund Amendments and Reauthorization Act of 1986 (SARA).
26. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k.
27. Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
28. Executive Orders (E.O.) Relating to Highway Projects (E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species; E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis; E.O. 14008, Tackling the Climate Crisis at Home and Abroad; Other Executive Orders not listed, but related to assigned projects.

The MOU allows the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the above-listed laws and E.O.s. The State also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation.

A copy of the proposed MOU may be viewed by contacting FHWA or the State at the addresses provided above. A copy may also be viewed online at the following URL: www.udot.utah.gov/go/environmental.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

AUTHORITY: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

ISSUED ON: April 5, 2023.

Ivan Marrero,
Division Administrator,
Federal Highway Administration.

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